

1 EDMUND G. BROWN JR.
Attorney General of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 LINDA K. SCHNEIDER
Supervising Deputy Attorney General
4 State Bar No. 101336
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-3037
7 Facsimile: (619) 645-2061
Attorneys for Complainant

8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. **2011-35**
A C C U S A T I O N

12 **FRED GABRIEL**
13 **320 Shady Lane, Apt. 15**
14 **El Cajon, CA 92021**

15 **Registered Nurse License No. 718785**

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
22 of Consumer Affairs.

23 2. On or about January 29, 2008, the Board of Registered Nursing issued Registered
24 Nurse License Number 718785 to Fred Gabriel (Respondent). The Registered Nurse License was
25 in full force and effect at all times relevant to the charges brought herein and will expire on
26 April 30, 2011, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

6. Section 490 of the Code provides that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

7. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

"As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'"

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1 a. On March 12, 2010, in a criminal case entitled *The People of the State of California*
2 *v. Fred Gabriel*, San Diego Superior Court case number SCE289967, Respondent was originally
3 charged with violating Penal Code sections 422, making a criminal threat, 69, resisting executive
4 officer, and 243, subdivision (b), battery upon an officer and emergency personnel. The charges
5 were amended and he was convicted by his plea of guilty for violating Penal Code sections 148,
6 resisting an officer, and 243, subdivision (b), battery upon an officer.

7 b. The facts that led to the conviction are that on April 20, 2009, Respondent entered the
8 Circle K store located at 1666 Alpine Boulevard, Alpine, California, and threatened the clerk
9 using expletives about America and Americans, and that he would shit on the clerk, kill her, and
10 cut her. The clerk was very afraid but saw a Sheriff's Deputy in the parking lot and went outside
11 to contact him and report that Respondent threatened her and she was fearful. Respondent told
12 the Deputy that the clerk at Circle K told him to sign a copy of the credit card receipts and that
13 made him mad because there was no reason to sign his copy. He kept telling the Deputy he was
14 not crazy and it would be crazy to sign his copy. When the Deputy asked Respondent if he stated
15 he was going to kill the clerk, he said he was done talking to the Deputy. Respondent was
16 arrested for Penal Code section 422, threaten crime with intent to terrorize. While in custody,
17 Respondent spit in the Sheriff's face and an additional charge for Penal Code section 243,
18 subdivision (b), battery on police officer, was later added.

19 c. As a result of the convictions, Respondent was sentenced to summary probation for
20 3 years, ordered to violate no laws, serve 180 days in jail with credit for 20 days, pay various
21 fines and fees, submit to search and seizure upon request of any law enforcement officer or
22 probation officer, and be evaluated by a medical doctor to maintain any prescribed medications.
23 Respondent was ordered to serve his jail sentence on March 22, 2010, in this case and in case
24 C289415.

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PRAYER


WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 718785, issued to Fred Gabriel;

2. Ordering Fred Gabriel to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: 7/12/10


LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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